IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1094 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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RABARI ODHAR MERAJI - Appellant(s)
Versus
RABARI MOTIBHAI KHUMABHAI & 2 - Defendant(s)

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Appearance :
MR VASANT S SHAH for Appellant(s) : 1,
SERVED BY AFFIX.(N) for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,
None for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 31/08/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and decree dated 1.07.1991 passed by the Motor Accident Claims Tribunal (Main), Mehsana in M.A.C.T No. 557 of 1984 whereby the same was dismissed.

2. The short facts of the case are that on 24.06.1980 the son of the original claimant was driving the truck No. G.T.K. 3644, which belongs and in the ownership of the original opponent No. 1 and 2. At that time the truck was turtled in the chokadi near village Rudarpura on Mehsana Vijapur road due to

mechanical defect. As a result of this accident he was admitted in the Civil Hospital at Mehsana and he was in coma and ultimately he died. Therefore the present appellant filed a claim petition claiming Rs. 1,00,000/- by way of compensation.

3. Learned advocate for the appellant has submitted that judgement and decree passed by the Motor Accident Claims Tribunal(Main) is illegal, improper, bad in law, against the principles of natural justice, which is requires to be set aside. He further submitted that the Tribunal has erred in deciding that, the accident has occurred due to the rash and negligence of the deceased without any evidence.

3.1 He further submitted that the Tribunal has erred in deciding that the deceased was himself a tort feaser and not entitled to the compensation.

4. Heard. I have gone thorough the judgement and decree of the tribunal. While passing the aforesaid order the Tribunal has come to the conclusion that

the original applicant was examined at Exh. 39 who has got no personal knowledge about the accident. The deceased was his son and the original opponent No. 1 was the owner of the said truck. Further it is clear that the panchnama of the place of accident mentioned that the wheels had bursted and that there was mechanical failure in that truck. On the contrary the complainant recites the fact that the P.S.I. had come to the conclusion on an inquiry from the witnesses that the accident has happened due to the rash and negligent driving on the part of the deceased truck driver. It should be borne in mind that the basic principle for claiming the compensation under Section 110-A of the Motor Vehicles Act is that the negligence on the part of the driver is required to be proved and compensation cannot be awarded without proof of negligence. The concept of vicarious liability without any negligence is opposed to the basic principles of law. Further the original applicant has not seen the accident and the cleaner who was on the truck has not given the evidence. So, there is no evidence to prove that due to mechanical failure and brake down this accident has happened. On

the contrary, there is a complaint in which it is clearly mentioned that the accident has happened due to the rash and negligent driving on the part of the truck driver himself who is now dead. There is no evidence to prove that there was mechanical brake down and no expert is examined by the owner. There is no reference about mechanical failure in the punchnama in the F.I.R.

5. Learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter.

6. In view of the above finding I am of the view that the Tribunal has not committed any error in passing the impugned order. I am in complete agreement with the reasonings adopted and the findings arrived at by the Tribunal. It shall be open for the appellant to approach the competent authority under the workmen Compensation Act which has been granted by the Tribunal. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*